

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

MUSOMA SUB REGISTRY

AT MUSOMA

MISC. LAND APPLICATION NO 106 OF 2021

*(Arising from Land Application No 219 of 2017 of the District Land and Housing
Tribunal for Mara)*

PAULINA PHILIPO MASARO APPLICANT

VERSUS

JOMU WAMBURA RESPONDENT

RULING

9th and 21st March, 2022

F. H. MAHIMBALI, J.:

The applicant is aggrieved by the decision of the DLHT of Musoma in Land Application No. 219 of 2017 dated 30th September, 2021 appeals against it before the High Court. She being out of time, has decided to file this application before this Court seeking extension of time to file appeal out of time. The application is brought under section 14(1) of the Law of Limitation Act and is supported by the affidavit of the applicant advancing grounds of her delay. The main grounds in her affidavit being two: first, the said copy of DLHT's judgment was signed late i.e 11th

October, 2021. And that from 19th November, 2021 she fell sick and has been attending medication from then until December, 2021 when she got a little fine. She then contacted a lawyer and eventually filed her case on line on 15th December, 2021.

The application is contested by the respondent on account that the reasons advanced are not satisfactory as the said applicant was all the time fine and attending her normal business in the village.

During the hearing of the application, the applicant was represented by Mr. Mligo and Ms Maura Tweve both learned advocate whereas the respondent fended for himself.

Arguing for the application, Ms Maura Tweve submitted that this is an application for extension of time brought under section 14 (1) of the law limitation Act. The application is brought following the decision in land application no 219 of 2017 – Musoma DLHT. The application is supported by an affidavit of the applicant, in which we pray that the same be adopted to form part of this submission. That the areas of insistence on the application are contained in paragraphs 3, 4, and 5 of the applicant's affidavit. She submitted further that, briefly the impugned decision of land application no 219 of 2017 was decided on 30/9/2021 and its copy signed on 11/10/2021. While the applicant was

in preparation of preparing her appeal, on 19/11/2021, she fell sick where on 22/11/2021, she submitted herself before Musoma Regional Referral Hospital and given 14 days of rest (excuse from duty).

As is that was not enough, when on 5/12/2021, she had returned to the same Hospital for check-up, she was attended and directed to return after seven days. On 12/12/2021 she had returned to the Hospital where she was attended again. It was on 13/12/2021, when she got a little fine, went to the lawyer (Mr. Mligo) where she was told that she was out of time to file an appeal (after lapse of 45 days). Following this, since sickness is a good ground of extending time to file appeal out of time, she prayed that this application be granted. In support of her submission on the ground of sickness, she inspired this Court to the decision of the case of **Kapapa Kumpindi vs The Plant Manager, Tanzania Breweries Ltd**, Civil Appeal No 6 of 2010, CAT at Mwanza (unreported) at page 21 where the Court of Appeal considered the ground of sicknesses as good reason for granting extension of time.

In countering the application, the respondent prayed that her filed counter affidavit be considered in contest of this application. The manner medical report/treatment was obtained is questionable. Since those documents are official, he wondered how she had obtained them

easily. He had expected that there should have been explained the proper manner how she obtained the said medical records say by a request letter. He considered the issue of sickness just a made story medically. What he is sure of, but not provided proof in the Court is that, in all that time in November, 2021 the applicant had been at the village fine and in business. He added that the said copy of judgment is not attached with this application and that he wondered as to why she is just appealing against the respondent only while they were three respondents. With this submission, he prayed that this application be dismissed with costs as it is not meritorious.

In her rejoinder submission, Ms Tweve reiterated her submission in chief. She added a little that as regards the argument that how the applicant obtained the said medical report while it is a government record, she argued that she being patient is not precluded from getting the medical report for the services he/she obtains from a particular hospital. On the argument that the applicant between September – November 2021 was fine and in business in the village, are mere words as there is no proof of the same.

As to why the application is against the respondent only and not all three respondents, she submitted that the applicant is not interested

with other respondents. She thus concluded by urging this Court be pleased to extend time for the Applicant to be allowed to file an appeal out of time for the stated reasons.

I have digested the parties' submissions via their respective counsel. The vital question here remains only one, whether there exists sufficient reasons warranting grant of the application as prayed and submitted.

Honestly speaking, I find none of the reasons advanced as embodying sufficient legal cause to warrant grant of this application as wished and prayed. In reaching this verdict, I have dispassionately considered and weighed the rival arguments from parties through their respective counsel. For sure I am mindful that to refuse or grant this application is the court's discretion. However, to do so there must accounted reasons for that. In **Mbogo Vs. Shah** (1968) EA the defunct Court of Appeal for Eastern Africa held:

"All relevant factors must be taken into account in deciding how to exercise the discretion to extend time....."

The law is, there must be an account for each day of delay. Delay even of a single day, has to be accounted for (See **Charles Pantaleo**

Kingoka Vs. Abasa Musa Kitoi – Civil Application no.71/76 of 2019), where the Court of Appeal said:

"There must be an account of each day of delay. Delay even of a single day, has to be accounted for"

In the case of **Selemani Juma Massala Vs. Sylvester Paul Mosha & Japhet Matiku Lyoba** – Civil Application no. 210 /01 of 2017 – un reported, the Court of Appeal stated at page 11.

"The settled position of the law is that, if there is a delay of any act, then each day of the delay has to be accounted for. Otherwise, there was no need of having such rules"

All in all, guided by the minimal guidelines set by the Court of Appeal in the case of **Ngao Godwin Losero** (supra) making reference to the case of **Lyamuya Construction Company Ltd Vs. Board of Registered Trustees of Young Women's Christian Association of Tanzania** (Civil Application No. 2/2010 – unreported) the Court of Appeal reiterated the following guidelines for the grant of extension of time:

- a) *The applicant must account for all the period of delay.*
- b) *The delay should not be inordinate.*
- c) *The applicant must show diligence and not apathy, negligence or sloppiness in the prosecution of the action that he is intending to take.*

d) If the court feels that there are other sufficient reasons such as existence of a point of law of sufficient importance; such as the illegality of the decisions ought to be challenged."

In this application, the reason why this application should be granted is mainly premised sickness of the applicant. I agree that sickness if established is a good ground for extension of time as well stated in the cited case of **Kapapa Kumpindi vs The Plant Manager, Tanzania Breweries Ltd**, Civil Appeal No 6 of 2010, CAT at Mwanza (unreported) at page 21 where the Court of Appeal considered the ground of sicknesses as good ground for granting extension of time.

However, considering the applicant's affidavit that the said judgment was signed on 11/10/2021, the 45 days to file his appeal lapsed on 14th November, 2021. What then prevented her from filing her appeal on time meaning between 12th October 2021 to 14th November 2021. Or if that is not the issue, if she started feeling sick from 19th November 2021, she would have filed this application earlier than December 2021 to wit from 15th November to 18th November 2021 on which days she has not accounted doing anything.

On competence of the application, it is clear that this being a land matter, an application for extension of time is as governed under section

41 (1) and (2) of LDCA, Cap 216 R.E 2019. The law provides as hereunder:

41.-(1) Subject to the provisions of any law for the time being in force, all appeals, revisions and similar proceeding from or in respect of any proceeding in a District Land and Housing Tribunal in the exercise of its original jurisdiction shall be heard by the High Court.

(2) An appeal under subsection (1) may be lodged within forty five days after the date of the decision or order:

Provided that, **the High Court may, for the good cause, extend the time for filing an appeal** either before or after the expiration of such period of forty-five days. [Emphasis added].

That said, it was not necessary and proper to employ the provisions of the Law of Limitation Act as an enabling law for the application of extension of time in land matters where there was a specific provision in the LDCA, Cap 216 R.E 2019 providing for the application on extension of time. The Court would not be properly moved.

All this said and done, what has been deposed and argued by the applicant's counsel is legally speaking nothing but exhibiting the party's apathy, negligence and sloppiness in which I am not in a position to condone any.

In the end result, the application is dismissed with costs.

DATED at MUSOMA this 21st day of March, 2022.



F. H. Mahimbali

Judge

Court: Ruling delivered this 21st day of March, 2022 in the presence of Maura Tweve, advocate for the applicant, respondent present in person and Mr. Gidion Mugoa – RMA.

F. H. Mahimbali

Judge

21/03/2022